UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/C.12/2001/SR.45
29 August 2001

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-sixth (extraordinary) session

SUMMARY RECORD OF THE 45th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 22 August 2001, at 3 p.m.

Chairperson: Mr. ATANGANA

CONTENTS

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial report of Nepal (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of the Committee at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.01-44325 (E) 270801 300801

The meeting was called to order a 3.20 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of Nepal (continued) (E/1990/5/Add.45; E/C.12/Q/NEP/1; HRI/CORE/1/Add.42; written replies to the list of issues prepared by the Government of Nepal (document without a symbol))

1. At the invitation of the Chairperson, Mr. N.B. Shrestha and Mr. Simkhada (Nepal) resumed their places at the Committee table.

Articles 1-5 of the Covenant

2. Ms. BARAHONA-RIERA, referring to the written reply to question 11 on the list of issues, on equality between men and women, asked whether any specific programmes existed for rural women and whether women had the right to own land. She requested information on the Government's attitude towards divorce, abortion and family planning, and the right of a woman to transmit her nationality to her husband or child. She further asked whether the change of Government had had an impact on programmes for women or on the resources devoted to those programmes.

3. Mr. CEAUSU said that, according to the World Bank, Nepal had access to generous assistance, amounting to US$ 20 per inhabitant per year, but the potential to improve the conditions of the disadvantaged rural population was not fully realized. The World Bank had identified a lack of local partners and an inadequate infrastructure as major constraints. He asked whether the Government had evaluated the results of international cooperation and whether it intended to review its policy in that area. Balanced development should include increased productivity, particularly as Nepal had access to a huge market in a neighbouring country. The Committee tended to focus on social and cultural rights, but it should also attempt to assist States parties to fulfil their obligations with regard to economic rights.

4. Mr. MALINVERNI welcomed the Government's efforts to deal with the problem of caste, as outlined in the written reply to question 9 on the list of issues. He asked what results had been achieved in practice. Furthermore, he asked whether legislation to protect the handicapped was being applied and whether handicapped workers were being integrated into economic life. Finally, referring to paragraph 60 of the initial report (E/1990/5/Add.45), he asked whether any special legal provisions had been made for the protection and advancement of the interests of women and children.

5. Mr. MARCHÁN ROMERO asked whether legislation against discrimination had produced tangible results. Nepal comprised a wealth of cultures and creeds, but Hinduism was the only recognized religion. He wished to know if there were any specific laws, apart from the provisions in the Constitution, that protected rural women from discrimination. Finally, he asked

whether, during the negotiations in preparation for Nepal to join the World Trade Organization (WTO), there had been consultation with ethnic groups in relation to the impact that a change in trade regime might have on traditional agriculture.

6. Mr. HUNT, referring to question 8 on the list of issues, asked whether the Government emphasized its obligations under the Covenant when negotiating with the World Bank and other international financial institutions.

7. Mr. AHMED said that information provided by Rural Reconstruction Nepal, a non-governmental organization, indicated that, among a multitude of minorities and languages, the Khas community and Sanskrit language were especially privileged. The State had sponsored a Sanskrit university to promote a language that was no longer in use, while languages such as Maithili, Abadhi, Tharu and Bhojpuri, spoken in the southern plains, and Rai, Limbu, Tamang, Magar and Gurung, which were spoken in the high hills and mountains, were ignored. There should be provision for all local languages and dialects. Furthermore, the Sanskrit university, which was currently open only to Brahmans, should be open to all. Pursuant to a government declaration, the age-old Kamaiya system of land serfs was to be abolished. The Government should establish social reintegration programmes for emancipated Kamaiyas, including access to land, housing, a decent livelihood, education and health facilities.

8. Mr. SADI, referring to the reply to question 8 on the list of issues, asked what the Government meant when it said that it endeavoured to take account of its international obligations in signing agreements with donors.

9. The CHAIRPERSON invited the delegation to respond to the questions raised.

10. Mr. N.B. SHRESTHA (Nepal), referring to the question by Mr. Hunt, said that the policy-making process involved the establishment of a planning commission. Plans were formulated only after extensive consultation with local bodies, which were also involved in implementation. While he was not in a position to provide specific information on negotiations with international financial institutions, human rights issues were certainly covered in all negotiations on bilateral projects.

11. The Ninth Plan put great stress on poverty alleviation and would therefore have an impact on rural women. The Government was also implementing specific programmes for women in rural areas, including access to micro-credit and assistance to small farmers. Raising the status of women must proceed through education, and the written replies indicated the steps that were being taken, in particular with respect to children of deprived and lower caste groups. The Constitution did not make any distinction between men and women, so that women had the right to own land. A bill on inheritance, intended to protect the inheritance rights of women, was in the final stages of discussion, and he hoped that it would soon be adopted by Parliament. The question of abortion was under discussion and might be covered in new legislation.

12. With regard to the caste system, he referred the Committee to the programmes listed in the written reply to question 9 on the list of issues. He disagreed with Mr. Ahmed's suggestion that little had been done for the Kamaiyas (bonded labourers). The written reply to issue 31 contained a detailed explanation of the numerous measures taken on their behalf.

13. As to persons with disabilities, the 1982 Disabled Persons Protection and Welfare Act had been amended and the Government had issued identity cards to the disabled, who would also be recorded as such in the forthcoming national census. They also benefited from loan and income-generating programmes, and had received social security benefits since 1995. Regarding languages, the Constitution provided that each community had the right to operate schools up to the primary level in its mother tongue.

14. Mr. SIMKHADA (Nepal) said that human rights cut across the entire United Nations system, assuming, alongside good governance, enormous importance in all negotiations on international cooperation. Accordingly the competent authorities that negotiated with international financial institutions were constantly reminded of the need to take the provisions of the Covenant into account. He had been impressed by the suggestion made at the previous meeting regarding the need for a human-rights assessment of projects and programmes, a factor always taken into account by his Government.

15. Regarding the impact on the caste system of legislation to eliminate discrimination, he pointed out that caste was an age-old convention of Nepalese society. The Government not only candidly admitted the need for such a serious issue to be addressed at all levels of society, but had already achieved positive results. For instance, untouchability had almost been eradicated in urban areas, as a result of a comprehensive proposal by the Prime Minister to make it a criminal offence in the framework of the modernization of the Nepalese society.

16. Nepal had a predominantly Hindu population. Freedom of religion and ethnic harmony were two ideals of which his country was justly proud, and which would continue to be respected as modernization progressed. The diversity of Nepal's languages and cultures had made it very difficult to build a nation, and Nepali had developed as a lingua franca in which everyone could communicate, but did not prevent each community from conducting its affairs in its own language.

Articles 6-9 of the Covenant

17. Mr. TEXIER said that while the number of International Labour Organization (ILO) conventions not ratified by the State party was not large, it included some that were particularly germane to the Committee's purview, such as Convention No. 2 on Unemployment, No. 29 on Forced Labour, and No. 87 on Freedom of Association. The unemployment figures provided were unclear, as they covered both unemployed and underemployed, who allegedly posed a grave problem, especially in urban areas. The State party's written replies had acknowledged that full-time and part-time child labour was prevalent, especially in the countryside, where children helped to work the land. The initial report (para. 93) referred to a series of protection measures relating to the minimum wage, education, adaptation of conditions of employment, and working hours. He wished to know more about those measures and how the Government intended to reduce child labour so that all children of school age could attend school or vocational training establishments. He also asked whether vocational and technical training programmes had led to increased employment.

18. Turning to article 7, he referred the delegation to the comments of the ILO Committee of Experts on the Application of Conventions and Recommendations, which had stressed that women were discriminated against in their remuneration for the same work as men or for different work of equal value, for instance on tea plantations. Since reality often differed from principle, were there any specific measures in that regard in addition to constitutional and legal provisions?

19. Was it true that the minimum wage was far from adequate to permit an average family to earn a decent living? How did the situation in rural areas compare with that in towns?

20. Nepal had enacted emergency legislation on a number of occasions. While article 8 of the Convention provided for such legislation, which restricted trade union rights, it should be of limited duration. To what extent could such rights be restricted in the State party?

21. Mr. AHMED said that, according to Rural Reconstruction Nepal, the reasons for the Maoist insurgency in Nepal - on which the report was silent - had been the high unemployment rate and disappointment that land reform had not materialized. The Government's gross failure to deliver goods and services to the people's satisfaction and continuing unemployment had left no alternative. Although the insurgency had subsided, had it done so sufficiently to cease to pose a threat, especially in the countryside?

22. Mr. CEAUSU, referring to article 6, said that, while the State party's report had furnished a sincere appraisal of the situation regarding the right to work and had listed the programmes and projects under way, it had not spoken of the expected impact of those measures. Although agriculture was supposedly the mainstay of the national economy, employing 81 per cent of the labour force and accounting for 41 per cent of the gross domestic product (GDP), it was thought that agricultural resources were not fully exploited and that some agricultural land could be much more productive. He wished to know whether any agrarian reform was in the pipeline, the size of the average Nepalese farm, and whether modern agriculture was practised. The State party's efforts should focus on the land and on helping the rural labour force, especially the non-landowning segment, to exercise its right to work.

23. It also appeared that there was a shortage of skilled workers in industry and that that was a cause of increasing poverty. However, other factors, such as the distribution of the factors of production and the marked population increase, needed to be addressed. The authorities did not say what financial resources were available for executing projects and programmes in that regard.

24. Poverty was a very complex phenomenon, and he found it difficult to believe that a State party could reduce the poverty rate from 45 per cent to 10 per cent in just 20 years. Measures taken by the authorities must reach the most disadvantaged segments of the population. Nepal must resolve the problem of land distribution so that landless persons could have the means to support themselves and their families. With that in mind, he asked how Nepal was ensuring implementation of the right to work.

25. Mr. WIMER ZAMBRANO asked what percentage of rural workers were organized in agricultural trade unions.

26. Mr. RATTRAY noted that, as the reply to issue 14 itself acknowledged, child labour was still a widespread phenomenon. Was there a minimum age below which child labour was prohibited and punishable? He recognized that children might work for their families in the agricultural sector, but what about child labour in intrinsically dangerous industries, such as in factories or mines? What impact did work have on children's normal development? In particular, what consequences did it have for school attendance for very young children?

27. Regarding trade union rights, he asked whether there were any activities for which strikes were prohibited. Were any categories of employees, such as in the public sector, emergency services or others, not allowed to strike? Could the delegation provide information on the procedure for declaring a lock-out? The statistics in annex VI to the written replies indicated a growing incidence of lock-outs as compared with strikes. Was that a reflection of a growing assertiveness among employers? Was it perhaps part of the new "philosophy" accompanying recent developments in liberalization and privatization in the economy? What impact was that having on overall industrial production and industrial relations?

28. Mr. TEXIER, referring to access to the civil service, noted that the ILO Committee of Experts on the Application of Conventions and Recommendations had asked Nepal for clarification of the term "moral turpitude" used in articles 10 and 61 of the Labour Code. The Nepalese Government had replied that it concerned corruption, unacceptable activity, drug addiction, rape, theft or other criminal acts. He asked the delegation to explain the meaning of "unacceptable activity", which was very broad and made it possible for someone to be denied access to the civil service without further explanation. Had anyone been denied access to the civil service or dismissed from it for that reason? Could examples be cited?

29. Mr. N.B. SHRESTHA (Nepal), referring first to the question on the ILO Conventions, said that Nepal had signed and ratified four ILO Conventions to date: Nos. 100, 111, 138 and 98. Conventions Nos. 29, 14 and 182 had been submitted to Parliament for ratification. Nepal would ratify other ILO Conventions in keeping with its capacity to discharge its obligations.

30. Regarding child labour, he said that the Nepalese Government was firmly committed to eradicating that serious problem and had taken many measures to do so. The Children's Act and Labour Act of 1992 prohibited the employment of children below the age of 14, although prohibition was not so explicit for the agricultural sector. He referred the Committee to the written reply to issue 14, as well as to the replies to issue 13 setting out the Nepalese Government's efforts to combat unemployment and issue 16 on minimum wages, which contained a table of various minimum wages.

31. Concerning implementation of article 8 of the Covenant, on trade union rights, he did not think that the legislation described in the written reply to issue 19 applied to the agricultural sector.

32. As for the questions asked about land reform, he drew attention to the information contained in the reply to issue 31. Three hectares of land were provided to poor families in the plains region, two hectares in the hilly region, four hectares in the mountainous region, one hectare in Kathmandu valley and half a hectare in other urban areas. The Nepalese Government

was working to scale down the size of landholdings to benefit the poor. On the question on the modernization of agriculture, he said that a basic aim was to increase production by distributing land to landless persons and improving yields.

33. Concerning the question on the increased number of lock-outs, he said that that development might have been due to the modernization of industry and the starting-up of many new enterprises following the introduction of democracy in 1990.

34. Regarding "moral turpitude" in the civil service, he said that, under the Civil Service Act, persons denied access to the civil service or removed from it on that ground had administrative and judicial recourse.

35. Mr. SIMKHADA (Nepal), referring to a question asked at the previous meeting on the refugee issue, said that the reply to issue 10 contained information on the flow of Tibetan refugees and other asylum-seekers. The large number of refugees in Nepal and its very liberal approach to asylum-seekers reflected his Government's commitment to humanitarian principles. Nepal was following developments in that area very closely.

36. Concerning the questions asked on organized labour, he said that the political changes of 1990 had resulted in full trade union rights. On the question of lock-outs, he said that in the tourism industry, the situation had become very serious following a dispute, and there had been threats of lock-outs. But the dispute had been resolved. That might explain in part the high statistics on lock-outs, although that would have to be confirmed.

37. He could not agree more on the need for his Government to focus on agriculture. A large percentage of the population depended on agriculture, and a transformation of society could only come about through a transformation of the agricultural sector; that was crucial to alleviating poverty and creating employment. Agrarian reform was critical, as the Prime Minister himself had recently stressed. But there were no easy answers. The Prime Minister had announced a temporary halt to the sale of land, and five cases challenging that announcement would be heard by the Supreme Court in the coming week. Another problem was how to decide on the optimal size of landholdings. Given the topography of the country, arable land was limited. The increase in the population had led to greater fragmentation, which was detrimental to agricultural efficiency. At the same time, there was a need to provide land to the landless and look after the interests of small landholders. That was a dilemma.

38. As for the question on the Maoist insurgency, he said that there were many possible reasons for its emergence. The Government's position was to ensure political plurality and the right to advocate one's own ideology and to work to resolve the problem through negotiation, a process which had already begun; results thus far had been promising.

39. Mr. TEXIER said that he had not received a reply to two of his questions. Firstly, he had not asked what the actual figure was for the minimum wage, but what its purchasing power was. In other words, how much did a worker need to earn to ensure a decent existence for himself and his family? Were NRs 1,500 per month sufficient? Secondly, he wanted to know whether it was true, as a number of NGOs had alleged, that provisions restricting trade union rights were often introduced during periods of crisis.

40. Mr. N.B. SHRESTHA (Nepal) said that the minimum wage level must be considered in the local context, bearing in mind the cost of living and economic capacity. The minimum wage must be affordable. In accordance with article 115 of the Constitution, trade union rights could not be suspended, even during a state of emergency.

41. Mr. SIMKHADA (Nepal) said that although trade union rights were guaranteed by the Constitution and national legislation, in the wake of the recent dispute affecting the tourism industry - a major sector of the national economy - the Government had decided that certain restrictions might be imposed on trade unions where essential services were involved.

Articles 10-12 of the Covenant

42. Mr. AHMED said that one of the major problems facing women highlighted in a report submitted by the Forum for Women, Law and Development, in collaboration with the Coalition of Women's NGOs in Nepal, was abortion, which was still illegal despite Nepal's ratification in 1991 of the Convention on the Elimination of All Forms of Discrimination against Women. In March 2000 a bill to legalize abortion, subject to the consent of the parent or spouse of the woman concerned, had not been passed by the Nepalese Parliament. As a result, abortion was still considered a criminal offence, even when the pregnancy was the result of rape or incest or endangered the life of the mother, or when the foetus was diagnosed with disabilities. There was no clear differentiation in Nepalese criminal law between abortion and infanticide, which was punishable by life imprisonment. Did the Government have any plans to remedy the situation?

43. Ms. BARAHONA-RIERA associated herself with Mr. Ahmed's remarks on abortion. She was not entirely satisfied with the delegation's answers to some of the questions she had asked at the previous meeting. For instance, what rights did divorced women have with respect to property acquired during marriage? What real possibilities did divorced women have of purchasing or retaining their share of jointly owned land in the light of the agrarian reform? What specific law-enforcement and social measures were being taken to combat the grave and widespread problem of trafficking in women? Did the change in government affect the continuity of national programmes for women; had any evaluation of their results been undertaken?

44. Mr. PILLAY said that the Government did little to promote family planning or allow abortions; as a result illegal abortion was common, which had a bearing on the maternal mortality rate.

45. The Government recognized that 42 per cent of the population lived in poverty. The poor were largely dependent on subsistence farming, yet seemed to have no security of tenure. A further problem was that much of the land was poor. Food subsidies had been abolished and various agriculture-related sectors had been privatized. Such policies merely served to increase poverty. NGOs were sceptical about the Government's Ninth Plan the main aim of which was to reduce poverty by 10 per cent. Perhaps Nepal should consider seeking debt relief, given that one quarter of the national budget was used for debt servicing. Land reform was also necessary. He expressed the hope that the State party would take due account of the Committee's statement on poverty, adopted at its twenty-fifth session, in devising future policies to alleviate poverty.

46. In the written replies no statistics on forced evictions had been provided, which was not in compliance with the Committee's General Comment No. 7. The Committee had, however, received reports from NGOs on the displacement of people from their ancestral lands, without adequate compensation or resettlement, for land development such as the Kulekhani and Marshynagdi hydropower projects. He would welcome clarification.

47. Mr. MARTYNOV said that access to safe drinking water was a serious problem in Nepal. According to NGO sources, government plans to privatize the water supply system in the Kathmandu valley failed to take account of the need to guarantee access to safe drinking water for the poor. Furthermore, proposed legislation on the privatization of national water resources would violate traditional ownership and unrestricted use of water resources by local communities and indigenous peoples. How did the Government envisage reconciling the problem of its privatization plans with the need to guarantee access to safe water for the more vulnerable segments of the population?

48. Mr. SADI asked how effective the 13-point National Plan of Action had been in combating trafficking in women. In its written replies to item No. 25 on the list of issues, the State party admitted that there were weaknesses in the enforcement of the relevant legal provisions. Why was that the case? What was the outcome of the 1999 workshop on criminal procedure and the human rights of women who were victims of trafficking?

49. Mr. N.B. SHRESTHA (Nepal), responding to comments on abortion, said that NGOs were very active in raising awareness of discrimination against women and highlighting lacunae in legislation. It was partly through their efforts, in cooperation with the Ministry of Women, Children and Social Welfare, that a bill had been brought before Parliament in 2000 to address those lacunae. Regrettably Parliament had been unable to give it due consideration, but he hoped it would be adopted in the near future. A parliamentary committee had also recently drafted a bill relating to women's property rights. It was likely to be adopted at the current session of Parliament.

50. The National Plan of Action on trafficking in women was a high priority at the regional level. In that context, the Ministry of Women, Children and Social Welfare had taken a number of practical initiatives, including the creation of rehabilitation centres for rescued women. The assistance of the Office of the High Commissioner for Human Rights had been sought in enforcing the provisions of the Plan of Action in society at large and at the administrative level. The 1999 workshop on trafficking had raised awareness of the problem and the need for action. Local NGOs were cooperating closely with the Government, in particular by providing assistance to rescued women. Although it would take time to eradicate the problem, some progress had been made. He would make statistics on forced evictions available to the Committee.

51. Mr. SIMKHADA (Nepal) agreed that NGOs played a valuable role - in part a reflection on the encouragement the Government gave to civic society. The relationship between population growth and development was a difficult issue which required further discussion. It was worth noting that very strict population control policies were generally unpopular. Nepal

had effective family planning measures. As far as abortion was concerned, he hoped that once the relevant bill had been adopted by Parliament, many of the very genuine concerns raised regarding abortion would be addressed.

52. There was no perfect solution to the problem of reconciling privatization with the need to provide basic services for the more vulnerable segments of the population. The possibility of applying universal standards was the subject of ongoing debate.

53. The CHAIRPERSON said that the Committee would continue its consideration of Nepal's initial report at the next meeting.

The meeting rose at 5.55 p.m.